

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3364 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JAIKISHAN R TAILOR

Versus

BILIMORA MUNICIPALITY

Appearance:

1. Special Civil Application No. 3364 of 1993

MR NK MAJMUDAR for the Petitioner

MR YV SHAH for Respondents Nos. 1-2

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 04/12/2004

ORAL JUDGEMENT

The petitioner, a former Chief Officer of the respondent Bilimora Municipality (hereinafter referred to as "the Municipality"), challenges the order dated 1st March, 1993 made by the Municipality dismissing the petitioner from service.

Under notice dated 24th/25th November, 1992 the petitioner was given a memorandum of charge containing 11 charges and was called upon to answer the same within 7 days therefrom. The petitioner did not reply to the said charge-sheet. The disciplinary proceeding against the petitioner with respect to the said 11 charges proceeded ex-parte. The enquiry officer submitted his report under communication dated 16th February, 1993. He opined that the imputation of charge made against the petitioner was proved. The said enquiry report was furnished to the petitioner under communication dated 16th February, 1993 and the petitioner was called upon to represent against the said report, if any. The petitioner, instead of submitting his representation, preferred Special Civil Application No.187/1993 before this Court. The said petition was disposed off on 26th February, 1993 (Coram: M.S.Parikh, J.). Pending the said petition the petitioner submitted his representation on 23rd February, 1993. The report of the enquiry officer and the reply given by the petitioner were placed before the General Board of the Municipality in its meeting held on 1st March, 1993. The petitioner was permitted to appear before the Board and to make oral submission. The Board unanimously concluded that the petitioner had failed to discharge his duties as Chief Officer. He was guilty of indiscipline and unbecoming behaviour. It was resolved that for the charges proved against the petitioner, the petitioner be dismissed from service. Accordingly, by order dated 1st March, 1993 the petitioner was dismissed from service. Feeling aggrieved, the petitioner has preferred the present petition.

Learned advocate Mr.Majmudar has submitted that the enquiry proceeding and the order of punishment are vitiated for violation of principles of natural justice and fair play. He has submitted that the petitioner was not given a formal charge-sheet. Nor was he supplied the supporting documents. The enquiry had proceeded ex-parte against the petitioner. He has also submitted that the members of the Municipality were biased against the petitioner. The enquiry proceeding and the order of punishment are, therefore, vitiated.

I am unable to agree with Mr.Majmudar. The memorandum of charge was drawn against the petitioner in clear and unambiguous language. The same was served upon the petitioner alongwith the notice dated 24th November, 1992. As disclosed from the enquiry officer's report, the petitioner did not accept the service of the said notice and the memorandum of charge sent to him by registered post and also under postal certificate. He refused to accept hand delivery also. The said notice was, therefore, served upon the petitioner by affixing. The petitioner was also sent documentary evidence under cover of letter dated 24th December, 1992 by registered post which he refused to accept. Once again the said documents were sent by registered post on 19th January, 1993. He was also intimated to give written reply to the said imputation of charge within 7 days therefrom. The petitioner was also sent intimation of dates of hearing of the enquiry proceeding. The petitioner, however, did not avail of the said opportunity. The petitioner did not remain present before the enquiry officer. For the first time, in the representation made against the enquiry report, the petitioner asked for examination of certain witnesses in his defence. The petitioner did submit reply to the charge-sheet to the President of the Municipality belatedly on 1st February, 1993, which the President refused to accept. It should be noted that reply to the charge-sheet, if any, ought to have been sent by the petitioner to the Municipality or to the enquiry officer who was seized of the matter. A belated reply given personally to the President of the Municipality for inspection of documents, etc. was meaningless.

In above view of the matter, it is evident that the enquiry proceeding was conducted in consonance with the principles of natural justice and fair play. It was the petitioner who did not avail of the opportunity of answering the charge-sheet or cross-examining the witnesses of the Municipality. Nor did he submit his defence statement. Thus, the petitioner did not avail of the opportunity of defence afforded to him. In the circumstances, the enquiry proceeding cannot be vitiated being violative of principles of natural justice and fair play.

Considering the nature of charge proved against the petitioner, it is established that the petitioner deliberately failed to perform his duty as the Chief Officer of the Municipality. He was also guilty of insubordination and indiscipline. Keeping in view the responsibility of the Chief Officer of a municipality the

guilt proved against the petitioner was grave enough to invite order of dismissal from service. The impugned order of punishment, therefore, does not call for interference.

In above view of the matter the petition is dismissed with cost. Rule is discharged.

(Ms. R.M.Doshit, J.)

/sakka